III

THE CITY GOVERNMENT OF BOSTON

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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

FIFTH SERIES

III

THE CITY GOVERNMENT OF BOSTON

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THE CITY GOVERNMENT OF BOSTON.

I.

THE FOUNDERS OF BOSTON.

The controlling influence in the spiritual and political councils of the founders of Boston, in New England, appears to have been held by those members of the Massachusetts Bay Company who came from the eastern counties of which Boston, in Old England, was the chief city, and who were commonly called, at the time, "the Boston men." The members of the company who came from the western counties of Dorset and Devon, and who were known as "the Dorchester men," represented the commercial element in the adventure.[1] But there was no conflict of opinion between these two parties to the enterprise concerning the system of government which was to be set up here. Neither the Boston men nor the Dorchester men had worked out the details of the scheme outlined in the charter of Charles I. Governor Winthrop, in general terms, stated the purpose to be "Cohabitation, and consortship, under a due form of government, both civil and ecclesiastical." The "due form" was to be shaped by circumstances.

It was not until 1641, nearly eleven years after the transfer of the government to New England, that written laws were adopted for the administration of justice; and in the meantime there had been no express recognition of the common law of England. "The deputies," said Winthrop, in 1635,

[1] S. F. Haven in Memorial History of Boston, I. 88–89.

"having conceived great danger to our state in regard that our magistrates, for want of positive laws in many cases, might proceed according to their discretion, it was agreed that some men should be appointed to frame a body of grounds of laws in resemblance to a Magna Charta, which, being allowed by some of the ministers and the general court, should be received for fundamental laws."[1]

In 1636 John Cotton, having been requested to assist the magistrates in compiling a body of laws, presented a copy of "Moses, his Judicials," taken almost literally from the books of Moses. It was never adopted, but it was printed in London, in 1641, as "an abstract of the laws of New England as they are now established." In 1641, the Body of Liberties, composed by Rev. Nathaniel Ward, "formerly a student and practiser in the course of the common law," was established for a period of three years, "by that experience to have them fully amended and established to be perpetual."[2]

In the laws thus tentatively put into operation, it is provided that "The freemen of every township shall have power to make such by-laws and constitutions as may concern the welfare of their town, provided they be not of a criminal, but only of a prudential nature, and that their penalties exceed not 20s. for one offense, and that they be not repugnant to the public laws and orders of the country. And if any inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalties by distress. . . . . The freemen of every town, or township, shall have full power to choose yearly, or for less time, out of themselves a convenient number of fit men to order the planting or prudential[3] occasions of that town, according to instructions

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[1] Winthrop, I. 160.

[2] Winthrop, II. 55. These laws were not printed, but were published in manuscript. See Mass. Hist. Coll., 3d Series, VIII.

[3] "What is intended by the word 'prudential,' when thus appropriated, is not very easy to determine. Be it what it may, all other town affairs are determined in a general town meeting of all the inhabitants." Hutchinson's Hist. Mass. Bay, I. 175, *note*.

given them in writing, provided nothing be done by them contrary to the public laws and orders of the country; provided also the number of such select persons be not above nine."[1] This was copied in substance from an order passed by the general court in 1635.[2] It forms the basis of the town system.

The early town government in Boston did not differ in any essential respect from the local government in other villages and townships in the colony. Although the "Boston men" were prompt to give to their new abode the name of the ancient city which they were taken to represent, there was no disposition to copy, as a whole, or to any considerable extent, the system of local government under which they had been living. It is true that they often followed English precedents;[3] but in the beginning they followed them, it may be said, rather unconsciously, and only to meet the practical necessities of their development. It is natural, therefore, that the parts of the English system which they assimilated should have been those parts which were more especially of

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Chief Justice Shaw said (Willard *v.* Newburyport, 12 Pick. 227), "Perhaps no better approximation to an exact description (of the term prudential affairs) can be made than to say that they embrace that large class of miscellaneous subjects, affecting the accommodation and convenience of the inhabitants, which have been placed under the municipal jurisdiction of towns by statute or usage." On this question of "usage" see note to page 28.

[1] Collections Mass. Hist. Soc., 3d Series, VIII. 227-228.

[2] Records of Mass., I. 172.

[3] The following vote, adopted by the general court in 1647 (some time after the first steps had been taken to form local-government organizations), will be of interest in this connection: "It is agreed by the Court, to the end we may have the better light for making and proceeding about laws, that there shall be these books following procured for the use of the Court from time to time: two of Sir Edward Cooke upon Littleton; two of the Books of Entryes; two of Sir Edward Cooke upon Magna Charta; two of the New Forms of the Law; two of Dalton's Justice of Peace; two of Sir Edward Cooke's Reports." It would appear from this that the magistrates were beginning to seek for precedents of a more modern character than were to be found in "Moses, his Judicials."

Teutonic origin, adopted by people who, under similar circumstances, had worked out a practical system of local self-government.

Although Boston was not for some years the most populous town in the colony, it was from the beginning the centre of its political and religious life. In the development of its local government it occupied somewhat the same relation to the other towns in the colony that London occupied, between the twelfth and eighteenth centuries, to the large towns of England.[1] The rights which the freemen of Boston claimed and exercised in the management of their local affairs, the legislation which they procured from time to time with a view to promote their local interests, formed the precedents for similar action on the part of the freemen in other communities.

II.

APPLICATION FOR INCORPORATION IN 1650.

During the period of nearly two centuries between the establishment of the town of Boston and the incorporation of the city, that is, from 1630 to 1822, various schemes were suggested for a general reorganization of the town system. Although the system had grown up in an irregular way, and was greatly wanting in symmetry and consistency, it was admirably adapted to the practical wants of the people; and although a desire for change manifested itself from time to time, the majority of the inhabitants could not agree upon any plan that suited them better until the increase of population made the town system impracticable. The first application for a special form of government was made in 1650. The general court ordered that a charter of incorporation be granted, "provided the articles and terms, privileges and immunities asked may be such as rationally should appear (respect-

[1] See Stubb's Eng. Const., I. 411.

ing the mean condition of the country) fit for the court to grant";[1] and the petitioners were instructed to have their plan ready for examination at the next session of the court. No plan was presented, however, and it does not appear from the contemporary records that any further action was taken.

This brings up the question, which is worth examining a little in this connection, whether the company had any authority, under the charter of 1628–9, to create municipal or other corporations. If the authority existed it was by implication, as a necessary part of the scheme of government provided by the charter, and not by any grant in direct terms. The charter granted to Gorges in 1639 established a provincial government, and in specific terms gave the proprietor, "his heirs and assigns," power "to erect, raise and build cities, boroughs and towns, and to grant letters or charters of incorporation, with all liberties and things belonging to the same." The first charter granted to the Massachusetts Bay Company established a corporation for certain purposes, with scarcely more than the customary powers to municipal corporations to manage their own affairs and control the admission of new members. Unless it was something more than a corporation, it certainly had no power to establish other corporations. That was a prerogative of the King.

The only provision in the charter which can be held as implying this power is that in which the company is authorized "to establish all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions," not contrary to the laws of the realm of England, "for

[1] This was probably intended as a warning to the petitioners not to present any such ambitious scheme of local government as had been put into operation in Gorgeana eight years before. Winthrop says, in his journal, "They have lately made Agamenticus, a poor village, a corporation, and a tailor their Mayor." Gorgeana (Agamenticus, now the town of York) was the first municipal organization on this continent to receive a city charter in the English form. It had, at the time, a population of about 250 inhabitants, and more than half the adult males were probably required to fill the offices provided in the charter.

settling the forms and ceremonies of government and magistracy fit and necessary, ... and for naming and settling all sorts of officers, both superior and inferior, which they shall find needful, ... and the distinguishing and setting forth of the several duties, powers and limits of every such office and place." This is a very comprehensive provision; but it certainly did not include in specific terms what the Gorges charter did, namely, the power to erect and incorporate cities, boroughs and towns. That some at least of the original members of the company understood the limitations of the charter is shown by the fact that in 1632 the pastor and elders at Watertown advised the freemen not to pay a tax levied on them by the Court of Assistants, on the ground that the court occupied the same position as, and had no more authority than, the mayor and aldermen of a municipal corporation. In several decisions of the highest court of Massachusetts since the Revolution it has been held that the mere naming of towns by the Court of Assistants gave them, in effect, corporate powers. Mr. Chief Justice Shaw, an able lawyer and a careful student of the early history of New England, stated, in the course of an elaborate opinion upon a noted case which came before the Supreme Court,[1] that "the charter was not merely a grant of property within the realm of England; but it contained provisions for the establishment of a separate dependent government under the allegiance of the King; and the government thereby constituted was invested with all the civil and political powers to enable it to establish and govern the colony, and to make laws for that purpose not repugnant to the laws of England."

In a subsequent decision[2] he said: "The terms 'plantation,' 'town' and 'township' seem to be used almost indiscriminately to indicate a cluster or body of persons inhabiting

[1] Mass. Rep., Commonwealth *v.* Alger, 7 Cush. 65.

[2] Commonwealth *v.* Roxbury, 9 Gray 485. A valuable historical note, written by Horace Gray, then reporter of the decisions, now one of the justices of the U. S. Supreme Court, is appended.

near each other; and when they became designated by name, certain powers were conferred upon them by general orders and laws, such as to manage their own prudential concerns, to elect deputies and the like, which in effect made them municipal corporations, and no formal acts of incorporation were granted until long afterward."

After quoting the order of the Court of Assistants (Sept. 7, O. S., 1630), "that Trimountain shall be called Boston; Mattapan, Dorchester; and the town upon Charles River, Watertown," he adds: "We doubt whether these places had any formal act of incorporation during the existence of the colony, or any other recognition by the government of a corporate existence." An examination of the records shows that towns were not expressly authorized to sue and be sued until 1694, three years after the province charter was granted, nor formally incorporated until 1785, five years after the first State constitution was adopted.

Hutchinson,[1] in describing the condition of local government at the time Boston made the application for incorporation in 1650, says: "Not only the town of Boston, but every town in the old colony was to many purposes a corporate body; they might sue and be sued, might choose their own officers for managing the affairs of the town, and the selectmen were judges of the breach of the by-laws of the town." The company did not hesitate to incorporate trade organizations as early as 1648, with power to make orders for managing their trade, and all affairs thereunto belonging, and annex reasonable penalties for the breach of the same, said orders not to be enforced until passed and allowed by the court of the county, or the Court of Assistants.[2] And two years later a formal charter of incorporation was granted to Harvard College. The fact that no such charters were

[1] Hist. Mass. Bay, 2d ed., London, 1760, I. 175, *note*.

[2] Mass. Records, I., p. 25. The master shoemakers and master coopers were incorporated at that time.

granted to towns shows that the general court was at least doubtful of its powers.

The incorporation of business or educational institutions would not be likely to attract much attention in England; but if a city charter had been granted to Boston, it might have brought on a discussion which the leading members of the company were anxious to avoid.[1]

III.

OTHER EFFORTS TO CHANGE THE TOWN ORGANIZATION.

From 1650 to 1708 it does not appear that any efforts were made to change the existing system of town government in Boston. In the latter year, at "a meeting of the freeholders and other inhabitants of Boston," the selectmen represented that the town-orders and by-laws were not properly executed, for the reason, mainly, that there was no proper head or town officer empowered for that purpose, "the law having put the execution of town orders into the hands of the justices only, who are not town but county officers." It cannot be expected, they said, that county officers should take the trouble and care, or make it so much their business to execute the town rules and by-laws as local officers specially appointed for the purpose; and good order was not to be expected under such an administration.[2] In accordance with their recommendation a committee was appointed to draft a charter of incorporation.

At the annual meeting in the following year such a draft

[1] It may be interesting in this connection to note that the Massachusetts Company became, by purchase of Gorges' grandson, in 1677, Lord Paramount of Maine, and as such had authority, within the territory covered by the patent, to incorporate cities, etc., down, certainly, to the time when its own charter was cancelled.

[2] Boston Town Records: 8th Report Record Com'rs, 55, 58.

was submitted,[1] but a majority of the voters were unwilling even to consider the subject. There was a decisive vote against calling another meeting for that purpose, and also against accepting the report of the committee. "A demagogue" called out, "It is a whelp now; it will be a lion by and by; knock it in the head. Mr. Moderator, put the question." "Some of the best men in the town," says Hutchinson, writing of it forty or fifty years later, "despairing of doing any service, would never be present in a town meeting afterwards."[2]

The statement made by the selectmen that the existing laws "put the execution of town orders into the hands of the justices only," would, if taken literally, give a very erroneous impression of the administration of town affairs. After the province charter had been proclaimed, an act was passed (Chap. 28, Province Laws, 1692–3) providing that there should be chosen annually, in March, by the freeholders and other inhabitants of each town, ratable at twenty pounds estate to one single rate besides the poll, "three, five, seven or nine persons, able and discreet, of good conversation, inhabitants within the town, to be selectmen, or townsmen, and overseers of the poor where other persons shall not be particularly chosen to that office; also to nominate and choose a town clerk, a commissioner for assessments, constables, surveyors of highways, tything-men, fence-viewers, clerks of the market, sealers of leather and other ordinary town officers"—namely: a town treasurer, assessors of taxes, collectors, surveyors of lumber, and hog-reeves. The selectmen, when authorized in writing by the town for that purpose, were "empowered to make necessary rules, orders and by-laws for the

[1] The plan reported by the committee was not entered on the records, and cannot now be found among the reports and papers of that year. The committee was composed of thirty-one persons, and included the principal townsmen, among others, Samuel Sewall, Isaac Addington, Elisha Cook, Elisha Hutchinson, Paul Dudley, Col. Winthrop, and Daniel Oliver.

[2] Hutchinson, Hist. Mass. Bay, I. 175, *note*.

directing, managing and ordering the prudential affairs of the town as they might judge most conducing to the peace, welfare and good order thereof, and to annex penalties for the observance of the same not exceeding twenty shillings for one offense; provided they be not repugnant to the laws of the province." By a law passed a few years later (Laws of 1695–6, Ch. 9, Sec. 6), the requirement that town orders should be approved by the justices in quarter sessions was repealed, and it was provided that "all town orders and by-laws, made or to be made by the towns, or selectmen by instruction, should be binding on all the inhabitants of the town, the penalties for breach of any of them to be levied by warrant of distress from the selectmen or town clerk by their order." Upon conviction of any such breach, the party grieved was allowed an appeal to the justices in quarter sessions. This appears to give the selectmen judicial power as well as legislative and executive power. But Hutchinson says that previous to 1691 "the selectmen were judges of the breach of the by-laws of the town, the penalty of which could not exceed twenty shillings," but that "under the new charter the selectmen have no judiciary power."[1] It is clear that under the province charter all judges, justices of the peace and other officers of the courts were to be appointed by the Governor and council; and it is evident from the representations made by the selectmen that they had been deprived of some of their powers, judicial or executive, or both, which they had formerly exercised without any authority in law.

In drafting the first State constitution, which was adopted in 1780, it did not, apparently, occur to anybody that the time would ever come when, through the increase of population, it would be impossible to manage municipal affairs in the larger towns in general meetings of all the qualified voters. The constitution established on a permanent basis the town system just as it then existed. The "freeholders

[1] Hutchinson, Hist. Mass. Bay, I. 175, *note*.

and other inhabitants" assembled in town meeting were not merely electors; they constituted a deliberative body on all questions of town government. They discussed, amended, adopted or rejected orders and by-laws; determined the purposes for which the public money should be expended, down even to the smallest details, and they fixed the exact amount to be raised by taxation.

All this, under the constitution, was required to be done in town meeting, without regard to the number of voters entitled to take part in the meeting. Boston contained at this time some three thousand voters; and when exciting questions were under discussion in town meeting "the fierce democratie shook the peninsula" and "fulmined" over the young republic.

In 1784, after a stormy discussion in town meeting, a committee was appointed to report what changes were needed to secure greater efficiency in the administration of local affairs. The committee reported two distinct plans: One to vest the government in a mayor, recorder, twelve aldermen and twenty-four councilmen;[1] and the other to vest the government in a board of nineteen aldermen, the president and six aldermen to be chosen by the citizens at large, and the other twelve aldermen by the several wards, one from each. Both plans were summarily rejected, not because they were contrary to the provisions of the new constitution, for no such objection appears to have been raised, but because a majority of the people clung to the old town system as the stronghold of their liberties.

In 1815 the population of the town had reached about 36,000, and the votes numbered nearly 6,000. The constitutional restriction had then become known to the inhabitants, and those who were dissatisfied with the old system exercised their ingenuity in devising a compromise measure which it

[1] This is substantially the same as the form of government provided in the charter granted by George II. to New York in 1730.

would be competent for the general court to adopt. A committee of prominent citizens reported a bill which provided that the selectmen of the town, annually chosen according to law, together with twenty-four delegates and one intendant, should be a body corporate and politic, under the title of "The Intendant and Municipality of the Town and City of Boston."

There were to be two delegates from each ward, freeholders in the town, and residents in the wards for which they were severally chosen. The selectmen and delegates, together with overseers of the poor and members of the board of health, also chosen by popular vote, were to assemble annually and elect by joint ballot one person, to be called "Intendant," who, *ex officio*, was to be chairman of the selectmen and of the school committee; and who, with the concurrence of the selectmen, was to have the general superintendence of the police. The intendant and municipality were to make by-laws and ordinances. The municipality was to elect all officers except those chosen by popular vote; and also to make appropriations for the maintenance of the government; but all expenditures were to be made under the direction of the selectmen, the overseers of the poor, and the board of health. Among other details, the scheme contained this remarkable provision:

"That the municipality shall have power to grant to any association of artists, artificers or mechanics such power of regulating themselves in their several occupations, and of possessing such immunities and imposing such restrictions as the said municipality shall consider for the benefit of the community and for the encouragement of industry."

The intendant and municipality were also required, once in every quarter, to select from the justices of the peace in the county three persons to sit as justices of the police court. In reporting their plan the committee stated that the continuance of the board of selectmen was rendered necessary by the letter of the constitution; that they did not deem it advis-

able to give the chief officer of the town judicial power, because then he would have to be appointed by the executive of the State; that the title they proposed for this officer—"The Intendant"—was borne by the officer in the same station in the city of Charleston, S. C., and "implied the duties which he was to execute"; that the title "Town and City of Boston" was suggested as "expressing truly and distinctly the nature of the corporation, which will be, in effect, the union of town and city authorities in one general government or municipality; that the name city was used because the delegation of powers and the organization of the government would be that of a city, with the names of officers accommodated to the circumstances and habits of the people, and also because, in the opinion of many persons, that name had an effect to 'raise the rank of a place in the estimation of foreigners.'" The committee concluded their report with this fine bit of self-glorification, from which it appears that the good opinion of themselves and their city held by Bostonians of the present day, was no less firmly and ostentatiously held by their grandfathers:

"The learning, intelligence, wealth, numbers, enterprise and public spirit of Boston entitle it, in the opinion of your committee, to the highest discriminating appellation universally given to their most distinguished places by the practice of all European nations." The appeal was seductive, and the compromise measure proposed was an ingenious one, but it failed to secure the approval of the majority of the voters.

In 1820 a State convention was called for the purpose of revising the constitution; and, among other matters submitted to it, was a proposition to authorize the Legislature to grant to towns charters of incorporation with the usual forms of city government. When the question came up for discussion, Lemuel Shaw, afterward chief justice, found it necessary, in urging the adoption of the amendment, to assure members of the convention that it was not the intention to grant special powers and privileges to one class of citizens.

The towns were already in possession of the corporate powers held by the cities in other States of the Union and in Great Britain. They had the power of choosing their own officers, of sending representatives to the general court, and they had jurisdiction over all their local affairs. The purpose of the amendment was simply to authorize such an organization as would permit the people to meet in sections, instead of in one body, and to choose representatives to act for them in the management of town business. Some of the country members feared that a city government might make laws which, not being known to the inhabitants of other parts of the commonwealth, would be "liable to ensnare and entrap" the *pagani*. But they were assured that the city, when incorporated, would have no more power in the making of by-laws and ordinances than the smallest towns already had.

John Adams, formerly President of the United States, and the author of the first State constitution, was a member of the convention, and spoke in support of the amendment. The inconvenience, he said, attending elections in the large seaport towns was so great that he did not suppose any one would have questioned the expediency of giving the Legislature the power proposed. But he was opposed to giving unlimited power; he loved the present system of town organization, and would not have it altered so long as the people could conveniently transact their business in the old way.

In Connecticut, he went on to say, when the Legislature opened the door to all the towns to secure city charters, they were inundated with applications. Even "a little clump of Indians, in that State, took it into their heads to apply for city powers and privileges. This convinced the Legislature of the impolicy of granting charters with so much liberality, and there they stopped." As adopted by the convention, and subsequently ratified by the people,[1] the amendment provided that the general court, subject to the consent of the people

[1] This amendment was adopted by a majority of only 62 votes in a total vote of 28,674.

concerned (as expressed in town meeting), should have full power and authority to erect or constitute municipal or city governments in any of the corporate towns of the Commonwealth containing not less than twelve thousand inhabitants, and to grant to the inhabitants such powers, privileges and immunities, not repugnant to the constitution, as might be deemed necessary or expedient.

The constitutional barrier to the reorganization of the local government having been removed, the question of applying to the Legislature for a city charter was brought before a special meeting of the inhabitants in Faneuil Hall in January, 1822. A committee appointed to report a plan recommended that there should be an executive board of seven persons, called the "Selectmen," elected by the legal voters on a general ticket; that there should be one chief executive, called the "Intendant," elected by the selectmen; that there should be a body with mixed legislative and executive powers, called a "Board of Assistants," consisting of four persons elected from each of the twelve wards. After a long discussion, extending over three days, the report was amended by giving the title of "Mayor" to the chief executive, and by substituting for "Selectmen" the term "Aldermen," and for "Board of Assistants" the term "Common Council."

The report was then adopted—not, however, by a large majority—and on the 14th of January, 1822, a petition for a city charter was presented to the Legislature. The petition recited that the size of the town made it impossible to carry on the government in the old form; that there was no hall large enough to contain all the legal voters, and if such a room existed the attendance would be too large to admit of proper deliberation; that in consequence many of the people stayed away from the meetings, and the business was transacted by a small minority of all the voters; that there was want of unity, regularity, and responsibility in the management of the prudential affairs of the town; that while the evils of such a state of things had been diminished by the intelligence, pru-

dence, and integrity of the different boards entrusted with the management of various branches of town affairs, yet no skill nor integrity could long supply the deficiencies of the present system.

Among those prominent in opposing the application for a charter was Josiah Quincy, who was afterward, as mayor, to win something more than local fame in putting the new system into operation.[1] "He believed," says his son, "the pure democracy of a town meeting more suited to the character of the people of New England, and less liable to abuse and corruption, than a more compact government."[2] But, whatever his belief may have been, it was simply impracticable to carry on the affairs of the town by a legislative and executive body composed of over seven thousand persons.

Some years afterward, in describing the condition of the government when the change was made, he said: "When a town meeting was held on any exciting subject, those only who obtained places near the moderator could even hear the discussion. A few busy or interested individuals easily obtained the management of the most important affairs in an assembly in which the greater number could have neither voice nor hearing. When the subject was not generally exciting, town meetings were usually composed of the selectmen, the town officers and thirty or forty inhabitants. Those who thus came were, for the most part, drawn to it from some official duty or private interest, which, when performed or attained, they generally troubled themselves but little, or not at all, about the other business of the meeting."[3]

Before proceeding to describe the new system of government which was to be introduced, it may be interesting to

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[1] John Phillips, the father of Wendell Phillips, was the first mayor, but he held the office only a year, and his influence was not felt in the administration. Josiah Quincy succeeded him, holding the office for six years, and really introducing and establishing the new system.

[2] Life of Josiah Quincy (by Edmund Quincy), 393.

[3] Quincy's Municipal History of Boston, 28.

state a little more fully the condition of the town, and of its government at this time. By the census of 1820 the population was 43,298. On the first of May, 1822, it was something over 45,000. The qualified voters numbered between 7,000 and 8,000. With few exceptions the inhabitants were of American origin. Probably there were not a hundred voters who had been born in a foreign land. The men who ruled the town by virtue of their enterprise, public spirit and social standing were the lineal descendants, in many cases, of the original settlers. During the next thirty years there was a remarkable change in the character of the population, of which some account will be given further on. The town officers, elected annually in town meetings held in March or April, consisted of nine selectmen, whose chairman generally had charge of the police; twelve overseers of the poor; thirty firewards; twelve school committeemen; twelve members of a board of health—one chosen by each ward; twenty surveyors of boards; six fence viewers; six cullers of hoops and staves; nine cullers of dry fish; four field drivers; three inspectors of lime; two surveyors of hemp; two surveyors of wheat; two assay masters; a town treasurer, and a town clerk.[1]

"Each of these boards," says the local historian of the time,[2] "performed its duties with alacrity and fidelity; yet there was a universal complaint that every by-law was infringed with impunity; and the want of one efficient,

[1] It appears from Freeman's "Town Officer," edition of 1794, that there were at that time 23 different town offices, the incumbents of which were elected annually in town meeting; that, in addition, there were ten different offices filled by appointment of the selectmen (such as measurers and sealers of wood, sealers of weights and measures, enginemen, inspectors of nails, etc.); three different offices filled by appointment of the Court of General Sessions of the Peace (viz.: surveyors, gaugers and searchers of tar, pitch and turpentine, a measurer of salt, and a measurer of grain); and five different offices filled by appointment of the Governor and council (viz.: surveyors of flax seed, inspectors of pot and pearl-ashes, inspectors of tobacco, provers of butter in firkins, and inspectors of loaf sugar).

[2] Snow's History of Boston, 365.

responsible head to take the lead in the affairs of the town and maintain a general oversight was extensively felt."

The annual taxes were voted in town meeting; and these were assessed by a board composed of twenty-four members (two for each ward) called assistant assessors, and three others selected by the assistants to be "permanent assessors," *i. e.* to hold office during the year. The valuation of real and personal property in 1820 was $38,289,200, and the rate of taxation was only four dollars on one thousand. The debt transferred from the town to the city was about $100,000.

IV.

THE FIRST CITY CHARTER, 1822.

On the 22d of February, 1822, the Governor of the State approved an Act passed by the general court, entitled "An Act establishing the City of Boston"; and on the 4th of March following, at "a legal meeting of the freeholders and other inhabitants of the town of Boston,"[1] held in Faneuil

[1] This was the old form of describing those qualified to vote:

By Chap. 28, Province Laws of 1692–93, the persons entitled to take part in town meetings are described as "the freeholders and other inhabitants ratable at twenty pounds estate to one single rate besides the poll." At the time of the Revolution the qualifications for voters in the election of representatives to the general court was an estate of forty shillings per annum in freehold within the province or territory, or other estate to the value of fifty pounds sterling. By the first constitution (1780), Chap. I., Sec. 2, Art. II., the persons entitled to vote are defined as "every male inhabitant of 21 years of age and upwards having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds." By the second article of amendment, adopted in 1821, every male citizen of 21 years of age and upwards, excepting paupers and persons under guardianship, who had resided in the State one year and in the town or district in which he desired to vote six months preceding an election, and who had within two years paid any State or county tax assessed upon him, was authorized to vote for State officers.

By Sec. 8 of the new charter, the qualifications for voters at municipal elections were made the same as at State elections.

It was then, and is now, competent for the general court to extend or restrict the suffrage in town and city elections.

Hall, the question, "Will you accept the charter granted by the Legislature?" was decided in the affirmative by a vote of 2,797 to 1,881.

It was merely a special Act of the Legislature, which could be altered or amended at any time, and which was without effect until accepted by a majority of the legal voters of the town. But, as authorizing the first departure from the system of local government which had been in operation nearly two centuries, it was regarded as a measure of the very highest importance. Not a few of the old residents who had fought under the eyes of Washington in the field, and under the eyes of Samuel Adams in the town meetings, looked upon the act which divided their great folk-mote into twelve separate and silent gatherings, where men delegated their rights to others, as the beginning of the end of democratic government. The whelp of 1709 had grown to be a lion.

Beyond the fact that it established representative government in place of government by general town meeting, the act was not in any sense a radical measure. It did not discontinue the old corporation and establish a new one. The act declared that the inhabitants of the town should "*continue* to be one body politic, in fact and in name," and as such should "have, exercise and enjoy, all the rights, immunities, powers and privileges," and be "subject to all the duties and obligations now incumbent upon, and appertaining to, said town as a municipal corporation." There was no substantial increase of powers or privileges, merely a change in the form of organization.

The charter provided that the citizens duly qualified to vote in city affairs should meet in their respective wards on the second Monday of April, annually (subsequently changed to the Tuesday after the second Monday in December), and choose by ballot a warden, clerk and five inspectors, whose duty it should be to preserve order at elections, and to receive, sort, count and declare all votes at all elections in the ward during the ensuing year; that at the same meeting

the citizens should be called upon to give their votes for "one able and discreet person, being an inhabitant of the city, to be mayor for the term of one year"; also for eight persons to constitute the board of aldermen for the ensuing year; also for "four able and discreet men, being inhabitants of the ward," to be members of the common council; also for one person to be a member of the school committee—the twelve persons so chosen (*i. e.* one from each ward), together with the mayor and aldermen, to constitute the committee having control of all the public schools; also for one person to be a member of the board of twelve overseers of the poor; also for a number of persons (to be determined by the city council, but not less than three from each ward) to be fire-wards of the city.[1]

The mayor was declared to be the chief executive officer of the corporation, but he had no power to act independently of the aldermen. The mayor and aldermen constituted one board, of which the mayor was, *ex officio*, the presiding officer. He had a vote on all questions, but not the veto power. In all cases in which appointments to office were directed to be made by the mayor and aldermen, the mayor had the exclusive power of nomination; but all important officers except those of the police were subject to annual election by the city council, some of them in convention of the two branches—*e. g.* the city clerk and the city treasurer—and others by concurrent vote. The mayor and the six aldermen formed the upper branch of the city council, and had substantially the powers formerly exercised by the board of nine selectmen. The common council of forty-eight members (four from each ward) formed the lower branch of the city council, presided over by one of its own members elected for that purpose at the beginning of the municipal year. Except in the election of certain officers, determining the

[1] In 1825 the power to select fire-wards was transferred to the mayor and aldermen.

number of representatives for the corporation to send to the general court,[1] and fixing the mayor's salary, the two branches were required to sit and act separately, each board having a negative upon the proceedings of the other. In general terms, the city council had all the powers formerly exercised by the inhabitants in town meeting. "More especially," the charter said, "they shall have power to make all such needful and salutary by-laws as towns by the laws of this commonwealth have power to make and establish, and to annex penalties, not exceeding twenty dollars, for the breach thereof, which by-laws shall take effect and be enforced .... without the sanction or confirmation of any court or other authority whatsoever, provided that such by-laws shall not be repugnant to the constitution and laws of the commonwealth, and that they shall be liable to be annulled by the Legislature."

The city council was also authorized "to lay and assess taxes for all purposes for which towns are by law required or authorized to assess and grant money"; also "to provide for the collection of such taxes," and "to make appropriations of all public moneys, and provide for the disbursement thereof, and take suitable measures to ensure a just and prompt account thereof"; also "to provide for the appointment or election of all necessary officers for the good government of the city not otherwise provided for, and prescribe their duties and fix their compensation"; also "to act as a board of health in establishing a quarantine for vessels, and in providing for the health, cleanliness, comfort and order of the city." Under the provision relating to the appointment of

[1] The State constitution of 1821 authorized every corporate town containing 150 ratable polls to elect one representative; every such town containing 375 ratable polls to elect two; every such containing 600 ratable polls to elect three, and proceeding in that manner, making 225 ratable polls the mean increasing number for every additional representative, the city council was authorized to determine the number for Boston "within the constitutional limits."

all necessary officers, the popular branch of the government (the common council) insisted on having an equal voice with the mayor and aldermen in the selection of all officers formerly chosen in town meeting, and also all new officers of any importance required in the reorganization of the government. It was therefore provided by ordinance that the auditor of accounts, the assessors of taxes, the engineers of the fire department, the superintendent of streets, and the heads of the charitable and reformatory institutions, and many of the minor officers, should be elected by concurrence of the two branches of the city council. This method of electing the heads of departments was retained for many years.

There was one provision of the new charter which was introduced for the purpose of making it more acceptable to those who, like Mr. Quincy, were loath to give up the general town meetings.

The mayor and aldermen were authorized to call general meetings of the citizens qualified to vote in city affairs, "to consult upon the common good, to give instructions to their representatives, and to take all lawful measures to obtain a redress of any grievances, according to the right secured to the people by the constitution." This provision has never been of any practical value; but it has been retained in the charter to this day, although several attempts have been made to repeal it. The acts of such a meeting would have no legal standing, and their moral influence would depend, of course, on the purpose of those who took part in the proceedings.

V.

THE REVISED CHARTER OF 1854.

No changes of importance were made in the laws governing the city until the year 1854, when a complete revision of the charter was adopted by the general court, and accepted by the city.

The need of increasing the power of the chief executive had long been felt, and with that view the mayor was given a qualified right to veto all acts of the city council, and all acts of either branch involving an expenditure of money. But the administration of the police and the general executive powers of the corporation were vested in the board of aldermen, which was increased to twelve members. The mayor was authorized to preside at meetings of the aldermen, but he had no vote. Practically the power of the mayor was curtailed, instead of being enlarged, although that was not the purpose of those who framed the new charter.

As chairman and member of the board, which had not only succeeded to all the executive powers formerly exercised by the selectmen of the town, but which had equal powers with the common council as a legislative body, the mayor was in a position to exert an important influence in the management of city affairs.

But what was wanted was greater direct power and responsibility, so as to make the mayor in fact, as well as in name, the chief executive. By giving the aldermen all the powers originally vested in the selectmen, and afterward in the mayor and aldermen, the new charter left the mayor with a mere show of executive power without the substance. He continued for some years to appoint the aldermanic committees and to act as chairman of the police committee, but he acted only on sufferance, and naturally with a view to conciliate those who were the real masters of the situation.

The powers of the city council in the election of heads of departments, and in raising and appropriating the public money, were not changed. The school committee was enlarged to six persons elected from each ward, to serve for three years; the aldermen ceased to be members of the committee,[1] and the mayor was made chairman *ex officio*. As the expendi-

[1] When a vacancy occurred in the committee during the interval between the annual municipal elections, it was filled by the committee in convention with the aldermen.

tures of the city increased, the members of the city council began to take a more active part in the executive business. Standing committees of the two branches were appointed on the different departments of the government, and the officers elected to manage the departments were practically made subordinate to them. The amount of money which the city council was authorized to raise by taxation, or by borrowing on the city's credit, was limited only by the general-statute provisions in relation to the objects of municipal concern.[1] By the city ordinances, and the rules of the two branches, the committees had absolute control over a large portion of the annual appropriations made for the different departments. It is not to be

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[1] By the present laws of the commonwealth, cities and towns are authorized "to grant and vote such sums as they judge necessary for the following purposes": Support of public schools; relief, support, maintenance and employment of poor; laying out, making, etc., highways, and town-ways; writing and publishing town histories; burial-grounds; destruction of noxious animals; necessary aid to disabled soldiers and sailors and their families; erecting monuments, decorating graves, etc., in memory of those who fell in the late war; conveying pupils to and from public schools; the detection and apprehension of those committing any felony; the maintenance of free public libraries and reading-rooms; for centennial celebrations (not exceeding one-tenth of one per cent. of assessed valuation); to encourage the planting of shade-trees (not exceeding fifty cents for each of its ratable polls in the preceding year); to erect and maintain public baths; to supply the inhabitants with pure water. In addition to the foregoing objects, cities are authorized to appropriate annually, for armories, for military companies, for the celebration of holidays, and for other public purposes, a sum not exceeding one-fiftieth of one per cent. of its valuation.

As to the power of cities and towns to make appropriations for objects not specially enumerated in the statutes, the Supreme Judicial Court of the commonwealth has said, "An unlawful expenditure of the money of a town cannot be rendered valid by usage, however long-continued. A casual or occasional exercise of a power by one or a few towns will not constitute a usage. It must not only be general, reasonable, and of long continuance, but it must also be a custom necessary to the exercise of some corporal power, or the enjoyment of some corporate right, or which contributes essentially to the necessities and conveniences of the inhabitants." Hood *v.* Lynn, 1 Allen 103, 106 (1861).

wondered at that under such a system the tax rate and debt of the city reached alarming proportions.

In the meantime the character of the population was rapidly changing. In 1840, steamship communication between Boston and Liverpool was established, and special facilities were afforded for the transportation to this country of the poor classes in Great Britain and Ireland. In 1820, as already stated, the inhabitants of Boston were almost wholly of American origin. In 1850, the population had increased from 43,298 to 138,788, of which 53,923 were Irish, 2,666 Germans, and 7,877 from other foreign countries, making a total of 63,466, or 45.73 per cent. Of the 75,322 inhabitants of American origin, about 48,573, or 64.49 per cent., consisted of those, and the descendants of those, living in Boston in 1820; 10,263 of those who had come from other parts of Massachusetts; 14,094 of those who had come from other New England States; and 2,392 of those who had come from still other States of the Union. By the census of 1855 it appeared that the whole number of foreigners was 85,507, an increase of 22,041 in five years.

The last national census (1880) gave a total population of 362,839, of which only 36.44 per cent. were pure natives—*i. e.* native-born with native parents. The foreign-born numbered 114,796—those born of foreign parents 116,311, those born in the United States and having both parents born here 131,742.

That the influence of the foreign-born population began to be felt in municipal politics soon after the tide of immigration set in strongly is shown by the fact that a new political organization, called the Native-American party, put forward a candidate for mayor in 1845, in opposition to the Whig and Democratic candidates, and after a prolonged contest elected him.[1] Later, when the Native-American, or "Know-

[1] A majority of all the votes cast was required by the charter then in force. Eight ballots were taken before the Native-American candidate received the requisite number. The charter of 1854 provided that a plurality should elect.

Nothing," party obtained control of the State government, the State constitution was amended so that no person of foreign birth could vote or be eligible to office until he had resided within the jurisdiction of the United States for two years subsequent to his naturalization, and was otherwise qualified, according to the constitution and laws of the commonwealth.[1] The gallant service which the residents of foreign birth were prompt to render when the war broke out in 1861, made the dominant party in the State rather ashamed of the restrictive legislation, and in 1863 the constitutional amendment was annulled without serious opposition, and naturalized foreigners were put on the same basis as other citizens.

VI.

RECENT CHANGES IN THE FORM OF GOVERNMENT.

Since 1854 there have been many changes in the laws relating to the government of Boston, but there has been no complete revision of the charter. During, and immediately following, the war the city's expenditures increased very rapidly. In 1860, with a population of 177,992, the amount of the tax raised for all purposes (State, county and city) was $2,530,000, and the rate was $8.99 on $1,000 of the valuation. In 1865, with a population of 192,318, the amount of tax was $6,521,921.84, and the rate was $15.80 on $1,000. Meanwhile the city debt had been considerably increased. While the manufacturing industries of Boston had been greatly stimulated by the war, its commerce had been seriously impaired, and it was for a time a question whether, for want of proper facilities for the transshipment of products from the West to Europe, the city was not going backward.

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[1] Art. XXIII. Amendments to Constitution, adopted 1859. Annulled by Art. XXVI. 1863.

Many of the well-to-do citizens established their legal domiciles out of the city limits, in order to escape the heavy taxes on their personal property.

The increase of city expenditures called for a corresponding increase of service on the part of city-council committees, and, as no direct compensation was allowed, an indirect compensation was sought by the less scrupulous members. There was, in consequence, a marked deterioration in the character of the governing body elected by the people. The annexation of adjoining cities and towns had the effect, for a time at least, to arrest the downward tendency. Between the years 1867 and 1873 two cities and three towns, containing a population of about 86,000, were united to Boston. Probably more than half the voters thus added had a larger interest in the prosperity of Boston than in the municipality in which they had formerly exercised their right of suffrage. But so long as the city council was permitted to exercise executive as well as legislative powers, to raise an unlimited amount of money by taxation, and also by borrowing on the city's credit, and to make its committees the real heads of the executive departments which had the spending of the money so raised, it was impossible long to preserve a high standard of efficiency, economy, or even honesty. Under this vicious system of administration several of the principal executive departments of the government were reduced to such a state of incompetence and corruption that the pressure of public opinion compelled a partial reform by substituting for the city-council committees, commissioners appointed by the mayor and confirmed by the concurrent vote of the aldermen and councilmen. In 1873, a commission[1] was appointed "to revise the charter and other laws relating to the city, and report the same in a

[1] The commission consisted of Benjamin R. Curtis, formerly a justice of the U. S. Supreme Court; George T. Bigelow, formerly chief justice of the Supreme Court of Massachusetts; Otis Norcross, formerly mayor of the city; Lemuel Shaw, son of the late chief justice, who drafted the original charter; Arthur W. Austin, formerly collector of the port.

new draft." The draft, submitted two years later, provided that the terms of office of the mayor and the members of the city council should be extended to three years; that the city council should have entire control over all appropriations of public money and the purposes for which it was to be expended; that the heads of the several executive departments of the government (whose powers and duties were carefully defined) should be selected and appointed by the mayor and confirmed by concurrent vote of the two branches of the city council;[1] that no member of the board of aldermen or common council, acting either individually or as a committee, should make any disbursement of public money, or perform any executive duty whatever, except as specially authorized by law. In their report the commissioners described the changes which had taken place in the population, the extent of territory, and the amount of taxable property since the first city charter was granted, and then went on to say:

[2]"Instead of a small, compact community, the leading citizens of which were well known to each other, it has become a large metropolis, with a population spread over a large extent of territory, divided into numerous villages, widely separated, having but few interests in common, and the inhabitants of which are but little known to each other. With these changes have come their natural consequences. Many institutions, public works and organizations have grown up or been established, such as the public exigencies

[1] This proposition—that the mayor's appointments should be subject to confirmation by the city council—was introduced with a view to secure the favor of the council in getting the measure through. But as, under the existing system, the council had the sole power of selecting the principal heads of departments, it was not disposed to accept the compromise. One ingenious member of the common council proposed that the two branches should select the officers by concurrent vote, and that the mayor should have a qualified right to veto the action, the same as in the case of orders and ordinances.

[2] No. 2 City Docs. Boston, 1875, pp. 5–6.

require, and which have added largely to the duties of the public officers of the city, essentially changed their character and rendered their administration more difficult and complicated. Among these may be named the introduction and supply of water; the maintenance of a large police force; the care and preservation of the public health; the efficient management of a fire department; the great increase of public ways and streets to be laid out, widened and kept in repair; the multiplication of public schools, and the establishment of hospitals and libraries.

"The enumeration comprises only a portion of the duties now required of the servants of the city. All of them need constant care and supervision, in order that efficient and faithful service may be exercised in the expenditures of the large amounts of money necessary to their support.

"It would seem to be clear that duties so numerous and important cannot be properly superintended and managed by persons who render gratuitous services only, or who are chosen to office not for their experience in the duties which they may be called upon to perform, or their peculiar fitness and skill in the work of the different departments which they may have in charge. The city is a great corporation, upon which is devolved not an abstract duty only of providing for the public welfare, but the practical work of the city in administering its various departments and executing the public works committed to its care. No prudent individual or well-conducted business corporation would trust the management of important affairs to the care of inexperienced, incompetent or inadequately paid agents. No good reason can be given for the adoption of a different policy by the city. The great object in providing for the performance of official services in behalf of the city should be to so regulate it that its servants should, as far as practicable, be trained by experience and practice, and be subject to proper control."

The recommendations of the commission naturally received little favor from the city council, and as there was no citizens'

organization to press the matter before the Legislature, the elaborate scheme of government, which had been prepared with much care, was tossed back and forth between the two branches of the council for a time and then suffered to drop out of sight. It was undoubtedly open to the criticism of covering too many of the details of administration, of establishing too many offices and departments, and of failing to give sufficient power and responsibility to the chief executive. It took ten years more of committee misgovernment to bring the taxpayers up to the point of demanding a radical change of the old system; and it was then accomplished by ignoring the city council and appealing directly to the Legislature.

In 1884 a commission, consisting of the chairman of the board of aldermen, the president of the common council, and three citizens selected by the mayor, was appointed to examine the laws relating to the city and report what changes, if any, were necessary or expedient by reason of the increase in area and population. The three members of the commission selected by the mayor, constituting a majority, united in a report which stated very clearly the debased condition of the city service, and which was accompanied by a series of propositions intended to secure greater efficiency, economy, and responsibility in the administration of local affairs.

It appeared that, under the system then in force, the different city officers were elected or appointed as follows: The mayor, three street commissioners and twenty-four school committeemen were elected by the qualified voters on a general ticket; twelve aldermen were elected by districts; seventy-two common councilmen were elected by wards; the city clerk was elected by the city council in convention; the heads of eight departments were appointed by the mayor, subject to confirmation by concurrent vote of the city council; one hundred and seventy officers, most of whom received good salaries, were elected by concurrent vote of the city council; the election officers (856 in number), the constables, and one hundred and twenty-nine other officers, most of whom were

paid by fees, were appointed by the mayor subject to confirmation by the board of aldermen; nine superintendents of bridges were appointed by the aldermen alone. The mayor had power to appoint a single clerk for his own office, but beyond that all his appointments were subject to confirmation.

The commission found that property, both real and personal, was more heavily taxed in Boston than in any other large city in this country. The expenditures on city account, exclusive of payment on account of interest and city debt, amounted to $27.30 for each inhabitant. The expenditures in New York at the same time amounted to $16.76; in Baltimore to $11.67; in Philadelphia to $10.15; in Cincinnati to $10.63.

"It is true," the commission said, "that the city government of Boston does more for the comfort and convenience of the people than the government of the cities with which its expenditures have been compared; but it does not do enough more to account for the very great difference in the rate of taxation. . . . . The numerous independent departments in the government, and the exercise of executive powers by committees, afford an excellent opportunity to those who seek an expenditure of the public money for purposes by which they will be directly or indirectly benefited. Our system encourages such applications, and, as a consequence, promotes 'jobbery' and 'log-rolling.' Reduce the number of departments and place them under a responsible head, less amenable to political influence, and there would be fewer demands upon the treasury and a more careful scrutiny of such demands when made. . . . . In recommending that the legislative power of the local government be vested in the city council, and that the executive power be vested in the mayor and certain heads of departments, we are recommending what long experience has shown to be the only safe and practical method of carrying on the government. . . . .

"The state of confusion which exists in our government, and the almost unexampled burden of taxation which rests

upon the people, are due largely, if not wholly, to the departure from that method. . . . . If the city council is deprived of executive power, its remaining duties can be better performed by one body than by two. When the attention of the voters is directed to the selection of men for one board, they will be likely to exercise more discrimination than if their attention is divided between selections for two boards. One body having the responsibility is more amenable to public opinion than two, and the voters can more easily fix the responsibility. By relieving the council of the wear and tear which accompanies the selection of the subordinate executive officers, and by relieving its committees of executive duty, it will be possible 'for men of business, competent and trustworthy, who have, with all honest citizens, a common and personal interest in the public welfare, to take part in the legislative branch of the government.'

"In place of the present council of seventy-two persons, elected by the several wards, we propose a council composed of two persons from each of the wards into which the city is or will be divided. This will give an adequate representation to all sections of the city. The body will not be too large for the prompt transaction of business, and it will not be so small that interested parties can easily control the majority.

"In order to carry out the idea of separating the executive from the legislative department, it is necessary that the mayor should have the appointment of all heads of executive departments.

"We have already stated the objections to giving him the sole power of appointment.[1] There are also serious objec-

[1] The commission appointed by Governor Tilden to devise a plan of government for the cities in New York, stated in their report, submitted in 1877, that "to bestow upon the mayor the absolute power of appointment and removal of all the principal executive officers would, in the great cities, render him an autocrat. Responsibility for maladministration would, it is true, be easily fastened upon him; but to apply the remedy of deposition from power at an election would be a difficult task. To put into

tions to placing the power of confirmation in the legislative branch. It is in violation of the principle which, as we have shown, lies at the foundation of responsible government. How, then, can we place a check upon the arbitrary exercise of power without unduly interfering with the executive power and responsibility? The only satisfactory solution of the problem appears to be the establishment of an executive council, composed of a small number of persons, elected from the citizens at large upon the minority-representation plan.

"We propose, therefore, that at the election of mayor and members of the city council each voter shall vote for three executive councillors, and that the five persons having the highest number of votes in the whole city shall be declared elected; that the persons so elected shall constitute an executive council to act upon the mayor's appointments of city officers; that they, with the mayor, shall exercise the powers now vested in the street commissioners, and shall also perform certain duties now performed by the board of aldermen in relation to the inspection of prisons and houses of detention, the payment of State aid, and the auditing of county accounts.

"The office being one of real power and importance, but one which will not require so much time as the present aldermanic office, with its executive and legislative duties, will call

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the hands of a single man the control of twenty millions of dollars, with liberty to use it to keep himself in place, would be suicidal. On the other hand, to require the concurrence of the aldermen in appointments is to divide and destroy responsibility." A solution of the difficulty, not entirely satisfactory to the commission, was found in giving the mayor the sole power of appointment, except in the case of the chief financial and chief law officers, and checking his power of removal by requiring for that act the approval of the Governor of the State. Commenting on this, and on the condition of affairs in Brooklyn, where for some years the sole power of appointment had been vested in the mayor, the Boston commission said: "That it would not be expedient to give the sole power of appointment to the mayor, and that it would be equally unwise to place the confirming power in the legislative department, are propositions which rest on sound principles; but experience has shown that the difficulty is not to be met by placing the mayor under the control of the chief executive of the State."

for, and be likely to attract, public-spirited and substantial citizens, who, whether in the majority or minority, will be in a position to make their influence felt. By the method of selection proposed the minority will always be sure of a two-fifths representation. This plan works well wherever it has been tried. The minority representatives in the councils of other cities are said to be the most valuable members.

"We propose that the terms of office of the mayor and members of the executive and city councils be extended to two years. This will tend to give greater stability to the municipal system, and will have a conservative influence upon the government. There are two objections to electing a part of the city council each year. The people would not turn out to vote for a few members of the city council and school committee; and if the government was a bad one, the election of a portion only of the legislative branch would not furnish an adequate remedy. The election once in two years of a responsible executive and the full legislative body will have sufficient importance to call out a full expression of the popular will; and on that we must rest our chances of good government.

"In most of the large cities it has been found expedient, as a measure of economy, to allow a fair compensation for the services performed by the legislative department. There is no reason to call for gratuitous service here, any more than in the general court or jury-room. We propose, therefore, that the members of the city council and executive council shall be paid what would be equivalent to about five dollars for each session in council or committee. It is better to fix a definite sum for the year's service than to allow compensation for each day's service, as there is a temptation, under the latter method, to multiply committee meetings and to misrepresent the amount of service performed. . . . .

"In regard to the executive departments, we propose that the number shall be considerably reduced, and that, with the exception of the office for issuing licenses for the sale of intox-

icating liquors, and certain departments managed by unpaid boards, each department be placed under the charge of one person, who shall have power to appoint his subordinates; the number of the subordinates and the compensation of each, as well as the head of the department, to be fixed, as heretofore, by the city council. There has been a growing feeling against the establishment of what are called 'three-headed commissions,' not so much on account of the expense involved as the divided responsibility, which prevents the citizens from holding an individual accountable for the management of the department. The adoption of the Civil Service Act removes from the domain of political and personal influence the appointment of subordinates in the several departments, so that the objection which has heretofore been urged against giving to one person such large powers of appointment as he would have in the police, fire, and water departments, no longer exists. . . . .

"That the mayor should have the initiative in the appointment of the executive officers who have charge of the several departments, is an essential part of our plan. It is contrary to the first principles of good government to give to the legislative body, which has control of the public purse, the election or control (for the election carries with it the control, no matter what the laws and ordinances provide to the contrary) of the individuals by whom the money is to be expended.

"We have already shown that the present want of economy in the management of city affairs is due largely to the multiplicity of departments, and of independent executive officers. Each head of a petty department naturally magnifies his office, demands large and handsomely furnished quarters, seeks to surround himself with a staff of clerks and subordinates, purchases his own supplies, and, deriving his power from the city council, occupies a position in relation to the mayor much the same as the mayor occupies in relation to the Governor. It is easy, therefore, to account for the extraordinary difference in the running expenses of Boston and

those of most other cities in the country. In New York the executive business of the corporation (with the exception of the educational department) is carried on by twelve departments, including the mayor's, five of the departments being under the charge of one commissioner each, four under the charge of three commissioners each, and two under the charge of four commissioners each, making in all twenty-five persons. In Brooklyn there are twelve departments, all but two (assessment of taxes and excise) governed by a single head. In Boston we have thirty-seven different departments, controlled by one hundred and five persons, not including assistant assessors, superintendents of bridges, and numerous committees of the city council, which, as we have already shown, exercise executive powers. . . . . It is proposed that the mayor shall have power to veto distinct items or subjects in any ordinance or order; that the mayor or any other municipal officer may be indicted, and, if found guilty, fined or removed from office for a palpable omission of duty, or misconduct, or misfeasance in the discharge of his duties; that the mayor shall, once a month or oftener, call the heads of departments together for consultation and advice upon the affairs of the city; and that the estimates for carrying on the several executive departments of the city shall be examined and revised by the mayor and executive council before being submitted to the city council."

In conclusion the commissioners said: "All the changes proposed are based on experience, and have been approved in practice. We have suggested nothing in the nature of an experiment. Those parts of our present system which appear to work well have been retained, and the method of carrying on the city business with which the people are familiar has not been greatly changed.

"No form of government can be devised which will, in the face of a majority of ignorant or indifferent voters, secure the election of honest and capable officers, and an impartial or economical administration of public affairs. But, to quote

the words of a recent mayor of this city, it is hardly probable that a condition of things can arise in any city in New England where those who have an interest in maintaining order will be outnumbered by those who hope for some personal benefit by creating disorder; therefore, if those who have interests at stake will bestir themselves to protect their interests—and there is no safety in any scheme which can be devised unless they do so—they can better accomplish their purpose by outvoting their opponents than by undertaking to deprive them of privileges which they now possess. The ballot is an educational power. The possession of it quickens the intelligence, and tends to bind the nation together. It is more important to have an alert, well-taught and satisfied people, than a theoretically good legislative machine.

"The most we can demand of the organic law is that it shall give free play to the better social forces, make public servants responsible for their acts, and put the minority in a position to enforce that responsibility, and to detect, expose, and punish the betrayal of public trust."

Two minority reports were presented from the representatives of the two branches of the city council. The chairman of the board of aldermen was opposed to any change in the existing organization of the city council, but he favored a reduction in the number of heads of departments (not, however, to the extent recommended by the majority), their appointment by the mayor and aldermen, and a transfer of all executive power to the mayor, aldermen, and heads of departments. By his scheme the power of the board which he represented was greatly increased.

The president of the common council was opposed to any change in the organization of the city council, except to extend the term of service of members to three years; but he recommended the establishment of a board of public works, and the election, by concurrent vote of the city council, of all salaried heads of departments, the mayor to have a qualified veto of such elections to the same extent that he has over other acts of the legislative body.

The temper in which the majority report was discussed by the city council showed that nothing in the way of an adequate reform of existing abuses could be expected from that body. A citizens' association was formed, with a view to securing some measure of reform by direct application to the general court. The scheme finally adopted by the association included many of the important recommendations made by the commission. As it seemed necessary, in order to secure favorable action, that whatever scheme was presented should have the support of the entire organization, and as there were differences of opinion as to the expediency of reducing the legislative department of the government to one body, and also as to the expediency of giving the mayor the sole power of appointment, a compromise was agreed upon by which the two branches of the city council were retained in their original form, but without executive power, and the mayor was authorized to appoint all city officers, subject to confirmation by the aldermen, and to remove any of them for such cause as he might deem sufficient, a distinct statement of the cause being given in his order for removal. The mayor was also authorized to veto, subject to the usual qualifications, the separate items in any ordinance or order involving an appropriation or expenditure of money.

The scheme prepared by the association was adopted by the general court without material alteration. Another important measure, which originated with the then mayor, and which was favored by the Reform Association, was also adopted at the same time, limiting the rate of taxation to a sum not exceeding nine dollars (exclusive of the State tax, and of the sums required by law to be raised on account of the city debt) on every one thousand dollars of the average of the assessors' valuation of taxable property for the preceding five years. In connection with this restriction, the limit of municipal indebtedness, which, by an act passed in 1875, had been fixed at an amount not exceeding three per cent. of the last preceding valuation, was further reduced to two per cent. on the average valuation for the preceding five years.

The general court of the same year (1885) passed another act, which was prepared by those specially interested in the cause of temperance and the suppression of vice, establishing a board of police for Boston. In 1878 a special act of the general court authorized the mayor to appoint, subject to the approval of the city council, three commissioners to have charge of the police department, with power to appoint all the officers, and to grant licenses for the sale of intoxicating liquors. It was represented that the influences under which the commissioners were appointed prevented them from properly executing the State laws for regulating and restraining the sale of liquor and for the suppression of gambling and prostitution. There was a good deal of evidence to sustain the charge. But it was evident that a majority of the voters of Boston, including many substantial citizens who were eager to support any legitimate measure for the restriction of the liquor traffic, were opposed to the principle of allowing the State to take possession of, and govern, the most important department of the local government—a department which, although it had shown some laxity in the enforcement of certain laws, had not failed, on the whole, to preserve order and protect life and property. The act provided for the appointment, by the Governor and council, of three citizens of Boston, to constitute a board of police, with power to "appoint, establish and organize" the police of Boston, and to license, regulate, and restrain the sale of intoxicating liquors.[1] The city is required to pay, on the requisition of the board, all expenses of maintaining the establishment. In case of a riot, or violent disturbance of public order, the mayor is authorized for the time being to assume control of the force, and the police board is required to execute his orders.

[1] Each city or town of the commonwealth determines annually, by popular vote, whether licenses for the sale of intoxicating liquor therein shall be granted or withheld. In Boston, and, indeed, in most of the cities, there is a large vote in favor of license.

The revenue derived from these licenses in Boston amounts to over half a million dollars a year.

VII.

OUTLINE OF THE PRESENT CITY GOVERNMENT.

The following outline of the system of local government now in operation under statutes of the commonwealth and ordinances of the city has been carefully prepared from original sources:

The city is divided into twenty-four wards, and each ward is subdivided into voting precincts,[1] containing as nearly as may be five hundred registered voters. The number of voting precincts at this time is 121. All elections, whether for national, State, county, or city officers, are conducted by a warden (who presides at the polling-place,[2] and has the important powers of a moderator of town meetings), a clerk and two inspectors, all of whom are appointed annually, between the first and the twentieth of September, by the mayor, with the approval of the board of aldermen.[3] The warden and one inspector must belong to a different political party from the clerk and the other inspector. The ballots cast at any election are received and counted by these officers, and, after the result is declared in open meeting, a record is made, signed and sent to the city clerk, together with the ballots, which are enclosed in a sealed envelope provided for the purpose.

The municipal election is held on the Tuesday after the second Monday of December annually. The qualifications

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[1] The division into wards is made by the city council after the decennial State census is taken. The subdivision into precincts is made by the board of assessors of taxes once in five years.

[2] The polling-places are designated by the aldermen.

[3] Deputies are appointed for each of the officers named, who serve only in the absence of their principals; and each deputy must be of the same political party as his principal.

of voters are the same in all elections.[1] The mayor, one street commissioner, and eight members of the school committee are voted for annually on a general ticket. One alderman is elected in each of the twelve aldermanic districts into which the city is divided.

Three members of the common council are elected by the voters in each ward.

The Mayor holds office for one year, from the first Monday in January. His salary, as fixed by the city council, is $10,000. The executive powers of the city are vested in him, "to be exercised through the several officers and boards of the city in their respective departments, under his general supervision and control." He appoints, subject to confirmation of the board of aldermen, all the principal officers and boards (except the board of police, the street commissioners, and the messengers and clerks in attendance upon the city council), and may remove any of them for such cause as he shall specify in the order for removal. He is required to call together the heads of departments once a month, or oftener, for consultation and advice upon the affairs of the city. Every ordinance, order, resolution, or vote of the city council, and every act of either branch, or of the school committee, involving an expenditure of money, must be presented to the mayor for his approval; and in the case of orders, etc., involving the expenditure of money, if there are separate items, he may approve some of the items or sums, and disapprove others. Any ordinance, order, items, or sums disapproved shall not be in force unless reconsidered and approved by a two-thirds vote of the members of the city council present when the vote is taken. The annual estimates of

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[1] The general qualifications are as follows: Males 21 years of age and upward (except paupers, persons under guardianship, and persons unable to read the constitution and write their name), who have resided within the State one year and within the city, town or district in which they claim a right to vote six months preceding the election, and who have paid a State or county tax within two years.

expenditures required by the several departments are sent to the mayor for examination, and he is required to submit them, with his recommendation thereon, to the city council. All contracts in which the amount involved exceeds $1,000 require the written approval of the mayor; all drafts upon the city treasury, and all certificates of indebtedness, also require his approval; and all conveyances, and leases of city land, and all other instruments under seal, executed in behalf of the city, must be signed and delivered by him.[1]

The City Council is composed of two branches: (1) The board of aldermen — twelve members — one being elected annually from each of the districts into which the city is, from time to time, divided by the city council; (2) the common council, of 72 members, three being elected from each of the 24 wards into which the city is divided. Neither the city council, nor either branch, nor any member or committee, is allowed to take part, either directly or indirectly, in the employment of labor, the making of contracts, the purchase of materials or supplies; or in the conduct of any of the executive or administrative business of the city; or in the expenditure of public money, except such as may be necessary for the contingent or incidental expenses of the city council or either branch.[2] The powers conferred upon the

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[1] A great many of the minor powers and duties of the mayor are omitted from this statement. It appears from the latest edition of the ordinances that no person can climb a tree, or throw stones, or lie on the grass on the Common, without getting a permit from the mayor!

[2] The appropriation for "contingent" and "incidental" expenses during the present year amounts to $68,000. It covers carriage hire, lunches, dinners, etc. In addition to this, an appropriation of $20,000 is made for "public celebrations." The Civil-Service Act of 1884 contains the following provision: "No city in the commonwealth shall pay any bill incurred by any official or officials thereof for wines, liquors or cigars; nor shall any city pay any bill for refreshments furnished to any official of said city where the amount for any one day shall exceed one dollar for each member of the government of said city who certifies over his own signature to the correctness of the bill." This provision has had only a partial success in checking "municipal junketing," which has long enjoyed a bad eminence in Boston. By connivance with hotel and stable-keepers, the less reputable members of the city council are enabled to evade the law.

city council by the charters of 1822 and 1854—namely, "to make all such needful and salutary by-laws and ordinances, not inconsistent with the laws of this commonwealth, as towns by such laws have power to make and establish";[1] to prescribe the duties and fix the compensation of city officers; to lay and assess taxes for all purposes for which towns are by law required or authorized to assess and grant money; to provide for the collection of such taxes, make appropriations of all public money, and take measures for a just and prompt account thereof—are still in force. But, as already stated, there is now a limit upon the rate of taxation and the amount of municipal indebtedness.

The School Committee consists of thirty-four persons elected by the qualified voters on a general ticket, eight every year, to serve for three years. The committee is required to organize annually, on the second Monday of January, by the choice of a president (one of its own members) and a secretary and auditing clerk. The committee is also required to elect a superintendent of schools and a board of supervisors, to hold office for the term of two years, unless sooner removed; also all teachers of the public schools, to serve during the pleasure of the committee; and all janitors of the school-houses. The compensation of all the persons so chosen is fixed by the committee. All contracts for the lease or purchase of land, and the erection of school-buildings, require the approval of the committee, and any additions or alterations involving an expenditure of more than $1,000 also require such approval.

The Street Commissioners—three persons elected by popular vote to serve for three years, one being elected each year—

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[1] By the Public Statutes (Chap. 27, Sec. 15) towns may make by-laws "for directing and managing the prudential affairs, preserving the peace and good order and maintaining the internal police thereof."

The maximum penalty which towns are authorized to annex to a breach of by-laws is $20 for one offense. In Boston the maximum penalty is $50. For meaning of "prudential affairs" see note to p. 6.

have the powers of county commissioners, in other counties of the State, in relation to laying out, altering, locating anew or discontinuing streets and ways, and in assessing betterments and damages therefor; provided, however, that where the estimate of the cost of laying out a street exceeds $10,000, the concurrence of the city council is necessary. They are also authorized to name streets, and, on appeal from the board of assessors, to abate taxes. The paving, grading, repairing and watering of the streets, and the numbering of the buildings thereon, are under the charge of a superintendent of streets, appointed annually by the mayor and aldermen. The ancient powers of surveyors of highways, formerly held by the aldermen, are now vested in the mayor, by the Act of 1885.

The Fire Department is organized by the city council under a special Act of the Legislature, passed in 1850. Three commissioners, appointed by the mayor and aldermen to serve for three years each, are entrusted with the duty of extinguishing fires and protecting life and property in case of fire within the city; and to that end they are authorized to appoint and fix the compensation of all officers and members of the department, and make suitable rules and regulations for their government and discipline. A fire marshal is appointed by the Governor and council, to serve for three years, with power "to examine into the cause, circumstances and origin of fires occurring in Boston," and to "decide whether the fire was the result of carelessness or the act of an incendiary." He has power to subpœna witnesses and compel their attendance. The expenses of his office are paid by the State.

There is a *Department for the Survey and Inspection of Buildings*, the chief officer of which is appointed by the mayor and aldermen to serve for three years. He appoints, with the approval of the mayor, fifteen assistant inspectors. It is their duty to examine buildings in course of erection, alteration or repair, and also all buildings reported dangerous. The records of the department are open to the fire engineers.

The Police Department is managed by a board of police, consisting of three persons, residents of Boston, appointed by the Governor and council to serve for five years each. The two principal political parties are required to be represented on the board. The general powers of the board have been already stated.[1]

The Health Department is organized by the city council under the powers granted by the charter of 1854. Three commissioners are appointed by the mayor and aldermen to serve for three years each. They have, by statute and ordinance, very large powers in the establishment of rules and regulations for the preservation of the public health and the abatement of nuisances. They appoint a city physician and port physician. The superintendent of health, so-called, is appointed by the mayor and aldermen. He has the care and maintenance of the city teams and city stables, and, under the direction of the board of health, cleans the public ways and catch-basins and removes the house-dirt, ashes and offal.

The Public Institutions, including under that term the House of Correction, the House of Industry, the House of Reformation, the Home for Pauper and Neglected Children, the almshouses and the Lunatic Hospital, are under the care of a board of nine directors appointed by the mayor and aldermen to serve for three years each. The directors serve without pay.

The City Hospital is managed by an incorporated board of trustees, consisting of five persons appointed by the mayor and aldermen to serve (without pay) for five years each.

The Overseers of the Poor were, until 1864, elected by popular vote[2]—one from each of the twelve wards. In that

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[1] See *ante*, 43; also Laws of 1885, Ch. 323.

[2] Grocers, coal-dealers, and others got elected on the board for the sole purpose of furnishing, either directly or indirectly, the articles for which the city paid. Mayor Quincy attempted in 1824 to obtain additional legislation by which the doings of the board would be brought under the supervision of the city council; but he failed, and his successors who afterward renewed the attempt failed, for the reason that the people could

year the Legislature authorized the city council to elect them, and they continued so to do until, under the Act of 1885, the power of appointment was given to the mayor and aldermen. They are appointed to serve for three years, four being appointed each year. They have charge of the outdoor relief of the poor (the indoor relief being administered in the almshouses by the directors for public institutions), and the care and custody of the trust funds which have been left to the city for that purpose. They are not compensated for their services.

The Water Department is managed by a board consisting of three persons, appointed by the mayor and aldermen to serve for three years each. The board has charge of the waterworks, and regulates the price, or rents, of water. The city engineer, appointed annually by the mayor and aldermen, is engineer of the waterworks and of such public works as the city council may, from time to time, direct.

The Park Department is organized under a special Act of the Legislature, passed in 1875. Three commissioners are appointed by the mayor and aldermen to serve (without pay) for three years each. They have charge of the parks recently established in the outlying sections of the city, with power to appoint police officers for service therein. Their jurisdiction does not extend to the Common, public garden and other open spaces in the old portion of the city. These are under the charge of a superintendent appointed by the mayor and aldermen.

The Public Library, which is supported by appropriations made by the city council, is managed by a board of trustees incorporated by the Legislature, the members of which, five in number, are appointed by the mayor and aldermen to serve (without pay) for five years each.

The Assessors' Department consists of five principal assess-

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not be made to understand why the persons elected by them to the board of overseers were not as trustworthy as those elected to the city council. Memorial Hist. Boston, III. 271.

ors, appointed by the mayor and aldermen for a term of three years each, with full power, under the laws of the State, to value real and personal property, and assess the taxes levied annually by the city council on account of the city, the county, and the State; and of thirty-four first assistant assessors, and the same number of second assistants, appointed annually by the principal assessors, subject to confirmation by the mayor. The assessors make out and deliver to the city collector, on or before the first day of October in each year, tax bills for all taxes assessed on persons or estates.

The City Collector is appointed annually by the mayor and aldermen, with authority to collect all bills and dues payable to the city, and to sell real estate for non-payment of taxes.

Three Registrars of Voters are appointed by the mayor and aldermen, to serve for three years each, whose duties in the preparation and revision of the voting-lists are carefully defined by law. Five *Directors of the Ferries* owned by the city are appointed annually by the mayor and aldermen to serve without pay. Five *Trustees of Mount Hope Cemetery* and five *Commissioners of Cedar Grove Cemetery* are appointed by the mayor and aldermen to serve without pay; the former being appointed annually, and the latter for a term of five years each. Six *Sinking Fund Commissioners* are appointed by the mayor and aldermen to serve without pay for three years each, and to have control of all the sinking funds for the redemption or payment of the city debt. Two *Record Commissioners* are appointed annually by the mayor and aldermen to serve without pay, and to have charge of completing the record of births, marriages, and deaths prior to 1849, and of copying, indexing, and printing the old records. In addition to the officers named, the following, whose titles suggest the duties they perform, are appointed annually by the mayor and aldermen, and their salaries fixed by the city council:

City Treasurer.
City Auditor.

Corporation Counsel.
City Solicitor.
Superintendent of Public Buildings.
City Architect.
Superintendent of Street Lights.
Superintendent of Bridges.
Superintendent of Sewers.
City Surveyor.
Harbor Master, and ten assistants.
Water Registrar.
Registrar of Births, Deaths and Marriages.
Superintendent of Printing.
Superintendent of Faneuil Hall Market.
Inspector of Provisions.
Inspector of Milk and Vinegar.
A Sealer and four Deputy Sealers of Weights and Measures.
A Commissioner on certain bridges between Cambridge and Boston.

Also 968 election officers and their deputies, to serve at the polling-places in the several precincts, and to receive such compensation as the city council may prescribe.

The following officers, appointed annually by the mayor and aldermen, are paid by fees fixed by the public statutes:

1 Inspector of Lime.
1 Culler of Hoops and Staves.
3 Fence Viewers.
10 Field Drivers and Pound Keepers.
3 Surveyors of Marble, etc.
3 Inspectors of Petroleum.
9 Superintendents of Hay Scales.
4 Measurers of Upper Leather.
15 Measurers of Wood and Bark.
20 Measurers of Grain.
15 Inspectors of Pressed Hay.
3 Weighers of Beef.

38 Weighers of Coal.
5 Weighers of Boilers and Heavy Machinery.
92 Undertakers.
4 Weighers and Inspectors of Ballast and Lighters.
150 Constables.

The following clerks and officers are elected by concurrent vote of the city council: A city clerk, who acts as clerk to the board of aldermen, and has, in general, the powers of a town clerk; a city messenger, and a clerk of committees. The common council elects its own clerk. In addition to all these, there are many county officers elected by the qualified voters of the County of Suffolk[1] (which includes, in addition to Boston, the city of Chelsea and the towns of Revere and Winthrop) for three or five years—*e. g.* a sheriff, who is keeper of the county jail, for three years; a register of deeds for three years; a register of probate and insolvency for five years; a district attorney for three years, and clerks of the supreme, superior civil, and superior criminal courts for five years.

Ever since the province charter was adopted in 1691, all judicial officers, from the highest to the lowest, had been appointed by the Governor and council to hold office during good behavior.

It appears that, exclusive of the election officers and the officers paid by fees, the mayor and aldermen appoint as members of permanent boards, or as single heads of departments, one hundred and seven persons, of whom sixty-five are appointed annually, sixty-one receive salaries established

[1] The whole territory of the Massachusetts Colony was divided in 1643 into four counties, showing roughly their relative territorial positions, namely: Essex (East Saxons), Middlesex (Middle Saxons), Norfolk (North Folk), Suffolk (South Folk). Norfolk, as at present constituted, lies mainly to the south of Suffolk. By an agreement, made some fifty years ago, between Boston and the other municipalities included in Suffolk County, Boston provides all the county buildings and pays all the county charges, except for laying out highways beyond its own limits; and it holds the title to all the property so provided.

by the city council (generally very liberal ones, considering the character of the service performed), and forty-six perform gratuitous service. There are no less than forty separate departments and offices in the city government as at present organized, to most of which a large number of assistants, clerks, or laborers are attached. All of these departments and offices, except the school committee, the street commissioners and the police, are now under "the general supervision and control" of the mayor, and thus a responsible system of administration has been secured; but, as stated in the report of the commission on the charter, in 1884, this multiplicity of departments and executive officers involves the city in expenses not to be measured by the salaries paid to the superfluous officials. The various officers and clerks appointed by the mayor and aldermen, or elected by the city council, have power to appoint their subordinates for such terms of service as may be fixed by law or ordinance. This is subject to the Civil-Service Law passed in 1884, which applies to the clerical, police, prison, fire, and common-labor service, and which is administered directly by a State commission.[1]

VIII.

CONCLUSION.

The development from a purely democratic government to the concentration of executive power in a single head is readily traced. First, all town or communal affairs are determined at meetings of all the freemen living within the township or plantation, the opinion of the major part of those attending the meeting being ascertained by a show of hands, or by *viva-voce* vote. The first departure from that is a hesitating bestowal of temporary executive authority upon the

[1] For a statement as to the operation of the law in the city of Boston, especially in regard to the labor service, see Second Annual Rep. of Mass. Commissioners, January, 1886.

pastors and elders. Then certain men, generally seven, ten or twelve, are selected to have charge, for a limited time, of the details of administration—the prudential affairs, so called.[1] A little later this delegation of local authority is recognized by the central authority, and placed upon an enduring basis, and the right of the several communities to continue to manage their local affairs is established. The next step, after a long interval, is the annual election by the qualified voters of representatives to manage all the corporate interests. Then comes the interposition of the State for the protection of property and the better enforcement of the criminal laws. And, lastly, there is a separation of the executive from the legislative power, and a concentration of the local executive power in a single head.

It will be observed that in Massachusetts, as in other populous States of the Union, the present tendency of legislation relating to municipal government is in the direction of concentrating the executive power, and of restricting and defining the legislative power, especially in the matter of raising and appropriating the public money. It is not alone in legislation concerning the city of Boston that the tendency is marked. In some of the charters recently granted to small cities, and in the amendment of charters granted thirty or forty years ago, the power of the mayor is increased, and the power of the city council, especially in the election and control of the executive heads of departments, is diminished.[2] This is not

[1] The earliest entry preserved in the town records of Boston is dated September 1, 1634. At that date the local executive was exercised by a board of ten different townsmen. In 1647 the custom began of electing in March seven men to serve during the ensuing year.

[2] In the last city charter granted by the State Legislature (Waltham, 1884), "the administration of all the fiscal, prudential and municipal affairs of the city, with the government thereof," is vested in the mayor and a board of 21 aldermen. There is no common council. In many of the other cities the power of the mayor in appointing and removing police and other officers has been increased, and appointments are made during good behavior instead of annually.

the result of any settled policy on the part of the State Legislature; it is in response to the demands of the citizens, who seek a stronger and more responsible government than the old system provided.

It is undoubtedly the duty of the State to establish the form of local-government organizations, and to define their powers and duties. And it would seem to be a legitimate exercise of its authority to limit, in general terms, the rate of taxation and the amount of municipal indebtedness; to prescribe the general purposes for which the public money shall be applied, and to ascertain by a central audit,[1] or otherwise, whether the public funds have been legally and honestly applied. This is a very different thing from putting the entire administration of local departments into the hands of State officials. The circumstances may be such as to justify a temporary exercise of such power, but it is difficult to conceive a condition of things in which the permanent interference in local government by the central authority will not, in the end, produce greater evils than those it seeks to cure.

The experience of New York on this point may be studied with profit. Nearly thirty years ago the misgovernment of that city reached a point where it seemed necessary, for the protection of life and property, that the administration of the local police should be placed under the control of the State executive. The centralizing tendency of the measure was admitted, and formed one of the principal points in the argument against its constitutionality. But the highest court of the State, while assenting to the proposition that a tendency might be discovered in the constitution toward local administration, and in favor of decentralizing the powers of government, held that there was nothing in the text of the fundamental law which prevented the Legislature from adopting such a measure as the establishment of a State police for

[1] For an account of the central audit of local-government accounts in England, see "Local Government" (English Citizen Series), by M. D. Chalmers; and Dist. Auditor's Act, 42 Vict., Ch. 6 (1879).

local service. "The business of the courts," said Mr. Chief Justice Denio, "is with the text of the fundamental law as they find it. They have no political maxims, and no line of policy to further or advance."

This scheme for strengthening and purifying the government of a great city by giving to the State executive, and the country delegates in the Legislature, a controlling influence in the management of local municipal affairs, was regarded by many citizens interested in the reform of municipal government as a happy solution of a most difficult problem. The scheme produced good results in the beginning, and other departments of the local government were brought under State control. But, as stated by the distinguished commission which was appointed by Governor Tilden to devise a plan for the government of cities in the State of New York, "the notion that legislative control was a proper remedy was a serious mistake." "One of the principal causes of existing evils," they said, "is the assumption by the Legislature of the direct control of local affairs. This legislative intervention has necessarily involved a disregard of one of the most fundamental principles of republican government. We entertain no doubt that this intervention has greatly aggravated the evils which it was, in many instances, designed to remove. . . . . The system of government by municipalities is inherent in our free institutions. The separate communities existing as integral parts of the commonwealth, but having local interests which immediately concern themselves rather than the State at large, the instinct of self-government has always asserted itself in some way as the basis of their organic life. From this vital germ have sprung the municipalities which, in every civilized state, have claimed and exercised the right, sometimes granted as a concession of sovereign power, and sometimes extorted by superior force, of administering law and government in respect to their local affairs, while retaining their allegiance as members of the whole nation. This element of local

administration in local affairs entered into the framework of our constitutional government at the outset, and was the most marked characteristic of the national life, reproduced and existing in this State, and in most of the States of the Union, at the time of the establishment of their independence. . . . . Whatever concerns the rights of all the citizens of the State, in respect either of person or property, belongs to the central authority, which is also charged with the duty of devising uniform plans by which the affairs of the various local divisions of the State may be administered by the people of those divisions.

"There are obvious reasons why the representatives elected to the central Legislature ought not to be charged with the direction of the local affairs of the municipalities: 1st. They have not the requisite time; 2d. They have not the requisite knowledge of details; 3d. They have not that sense of personal interest or personal responsibility to their constituents which is indispensable to the intelligent administration of local affairs."

And the commission placed first among the amendments which they recommended to be incorporated in the constitution of the State, a provision that the entire business of local administration should be delegated to the people of the cities, free from legislative interference therewith; reserving to the State its functions of making the general laws under which the local affairs are to be administered, and also a supervision of the manner of administration.

In the concluding chapter of the admirable little work on "Local Government," for the English Citizen Series, Mr. M. D. Chalmers says: "The extent of the administrative control that the central government should exercise is a most difficult problem. Obedience to the general laws which the Legislature has laid down for the preservation of private and individual rights and the limitation of the power of local authorities can be enforced by the courts of law; but how

far ought local bodies to be allowed to mismanage their own affairs? If they are superintended by an intelligent and conscientious central department, armed with large executive power, it is apt to err on the side of undue interference. When it sees things going wrong, it steps in with a high hand to set them right. Yet it is only by a succession of tumbles that a child can learn to walk. A local authority in leading-strings is not likely to learn aright the lesson of self-government. If local autonomy possesses the political value its admirers assert for it, it may be well worth while to make some temporary sacrifices to develop and strengthen it. In local matters 'that which is best administered' may not be 'best' in the long run. The tendency to regard all England as a suburb of London is certainly not a healthy one. Anything that can give vigor and color to local life should be encouraged. In the case of local bodies, as in the case of individuals, it may be better and healthier to be too little governed than to be too much governed, even though the government be good."

There is abundant evidence in the experience of France and Germany to show the evil effects of depriving the people of the local franchise and local self-government[1]—the political primary schools in which they get a practical knowledge of government, and of their political relations and responsibilities. But it is not within the scope of this paper to carry the discussion so far afield.

Having described the present system of local government in Boston, and its historical development, it may be said, in conclusion, that while it is crude in form and appears to contain much unnecessary and expensive machinery, it possesses (with the exception, perhaps, of the department under the control of the State) a certain adaptability to the wants

[1] See, in addition to standard historical works, Tocqueville's Democracy in America, 1st Am. ed., pp. 72–73; Conversations of Tocqueville with N. W. Senior, Vol. II. 78, *et seq.* Seeley's Life and Times of Stein, Pt. V., Ch. 3.